

Continuing Resolutions

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Continuing Resolutions

A. Introduction

1. Definition and General Description

The term “continuing resolution” may be defined as follows:

“Legislation enacted by Congress to provide budget authority for Federal agencies and/or **specific** activities to continue in operation until the regular appropriations are enacted. Continuing resolutions are enacted when action on appropriations is not completed by the beginning of a **fiscal year**.”¹

For the most part, continuing resolutions are temporary appropriation acts. With a few exceptions to be noted later, they **are** intended by Congress to be stop-gap measures enacted to keep existing federal programs functioning after the expiration of previous budget authority and until regular appropriation acts can be enacted. Congress resorts to the continuing resolution when there is no regular appropriation for a program or agency, perhaps because the two Houses have not yet agreed on common language, because authorizing legislation has not yet been enacted, or because the President has vetoed an appropriation act passed by Congress. 58 **Comp. Gen.** 530,532 (1979). Also, given the size and complexity of today’s government, the consequent complexity of the budget and appropriations process, and the occasionally differing policy objectives of the executive and legislative branches, it has become increasingly difficult for Congress **to** enact all of the regular appropriation acts before the **fiscal** year ends.

Continuing resolutions are nothing new. We have found administrative decisions discussing them as far back as the **1880s**.² At one time, they were called “temporary resolutions.” The term “continuing resolution” came into widespread use in the early **1960s**.³

In the 20 years from **FY 1962** to **FY 1981**, 85 percent of the appropriation bills for federal agencies were enacted after the start of

¹GAO, Glossary of Terms Used in the Federal Budget Process, PAD-81-27 (3d ed. March 1981), St 44.

²4 Lawrence, **First Comp. Dec.** 116(1883); 3 Lawrence, **First Comp. Dec.** 213 (1882).

³For a brief **historical sketch**, see Library of Congress, Congressional Research Service, Budget Concepts and Terminology: The Appropriations Phase, by Louis Fisher, GGR 74-210, Chapter V (1974). Fisher identifies what may have been the **first** continuing resolution, an 1876 resolution (19 Stat. 65) requested by President Grant. Id. at 31–32.

the fiscal year and thus necessitated continuing resolutions. GAO has discussed the problems inherent in this situation in several reports: Funding Gaps Jeopardize Federal Government Operations, **PAD-81-31** (March 3, 1981), Continuing Resolutions and an Assessment of Automatic Funding Approaches, **GAO/AFMD-86-16** (January 1986), and Government Shutdown: Permanent Funding Lapse Legislation Needed, **GAO/GGD-91-76** (June 1991). Funding gaps and the legal problems they present are discussed separately in Chapter 6.

Continuing resolutions are enacted as joint resolutions making continuing appropriations for a certain fiscal year. Although enacted in this form rather than as an “act,” once passed by both Houses of Congress and approved by the President, a continuing resolution becomes a public law and has the same force and effect as any other statute. **B-152554**, December 15, 1970; *Oklahoma v. Weinberger*, 360 F. Supp. 724, 726 (W.D. Okla. 1973). Since a continuing resolution is a form of appropriation act, it often will include the same types of restrictions and conditions that are commonly found in regular appropriation acts. E.g., **B-210603**, February 25, 1983 (ship construction appropriation in continuing resolution making funds available “**only** under a firm, **fixed** price type contract”). Having said this, however, it is necessary to note that continuing resolutions, at least those in what we will call the “traditional form,” differ considerably from regular appropriation acts.

Continuing resolutions may take different forms. The “traditional” form, used consistently (with some variation) into the **1980s**, employed essentially standard language and was clearly a temporary measure. An example of this form is the **1982** continuing resolution, Pub. L. No. 97-92, 95 Stat. 1183 (1981). When enacting continuing resolutions in this form, there is clear indication that Congress intends and expects that the normal authorization and appropriation process will eventually produce appropriation acts which will replace or terminate the budget authority contained in the resolution. Thus, a continuing resolution of this type generally provides that funds appropriated for an activity by the resolution will no longer be available for obligation if the activity is later funded by a regular appropriation act, or Congress indicates its intent to end the activity by enacting an applicable appropriation act without providing for the activity. 58 **Comp. Gen.** 530, 532 (1979). Obligations already incurred under the resolution, however, may be liquidated.

Unlike regular appropriation acts, continuing resolutions in their traditional form do not usually appropriate **specified** sums of money. Rather, they usually appropriate “**such** amounts as maybe necessary” for continuing projects or activities at a certain “rate for operations.” The rate for operations may be the amount provided for the activity in an appropriation act that has passed both Houses but has not become law; the lower of the amounts provided when each House has passed a different act; the lower of the amounts provided either in an act which has passed only one House or in the administration’s budget estimate; the amount specified in a particular conference report; the **lower** of either the amount provided in the budget estimate or the “current rate”; or simply the current rate. Therefore, in order to determine the sum of money appropriated for any given activity by this type of continuing resolution, it is necessary to examine documents other than the resolution itself. Some continuing resolutions have used a combination of “formula appropriations” of the types described in this paragraph and appropriations of specific dollar amounts. An example is the 1984 continuing resolution, Pub. L. No. 98-107, 97 Stat. 733 (1983).

There are times when Congress acknowledges at the outset that it is not likely to enact one or more regular appropriation acts during the current fiscal year. See, for example, the 1980 continuing resolution, Pub. L. No. 96-86, 93 Stat. 656 (1979), which provided budget authority for the legislative branch for the entire f-year.

For a few years in the **1980s**, Congress used a **very different** form of continuing resolution, simply stringing together the complete texts of appropriation **bills** not yet enacted and enacting them together in a single “omnibus” package. This approach reached its extreme in the 1988 continuing resolution, Pub. L. No. 100-202, 101 Stat. 1329 (1987), which included the complete texts of all 13 of the regular appropriation bills. This form of continuing resolution differs from the traditional form in two key respects:

- Unlike the traditional continuing resolution, the “full text” version amounts to an acknowledgement that no further action on the **unenacted** bills will be forthcoming, and consequently provides funding for the remainder of the **fiscal** year.
- When the entire text of an appropriation bill is incorporated into a continuing resolution, the appropriations are in the form of **specified** dollar amounts, the same as if the individual bill had been enacted.

The “full text” format generally does not raise the same issues of statutory interpretation that arise under the traditional format. However, it produces new ones. For example, in a continuing resolution which consolidates the full texts of what would otherwise have been several separate appropriation acts, GAO has construed the term “this act” as referring only to the individual “appropriation act” in which it appears rather than to the entire continuing resolution. **B-230110, April 11, 1988.**

While the omnibus approach of the 1988 resolution may appear convenient, it generated considerable controversy because, among other reasons, it is virtually “veto-proof”—the President has little choice but to sign the bill or bring the entire government to an abrupt halt.

There was no continuing resolution for fiscal year 1989. **All** 13 of the appropriation **bills** were enacted on time, for what was reported to be the first time in 12 **years**.⁴ For fiscal year 1990, Congress reverted to the traditional type of continuing resolution. See Pub. L. No. 101-100, 103 Stat. 638 (1989).

Questions arising under continuing resolutions can be grouped loosely into two broad categories. First are questions in which the fact that a continuing resolution is involved is **purely** incidental, in other words, questions which could have arisen just as easily under a regular appropriation act. For example, one of the issues considered in **B-230110, April 11, 1988**, was whether certain provisions in the 1988 resolution constituted permanent legislation. Cases in this category are included with their respective topics throughout this publication and are not repeated in this chapter.

Second are issues that are unique to continuing resolutions, and these are the focus of the remainder of this chapter. For the most part, the material deals with the traditional form of continuing resolution as it **is this** form that uses concepts and language found only in continuing resolutions.

One point that should emerge from the GAO decisions and opinions is the central role of legislative intent. To be sure, legislative intent cannot change the plain meaning of a statute; Congress must enact

⁴All Spending Bill Completed on Time, New York Times, October 2, 1988, at 27.

what it intends in order to make it law. However, there are many cases in which the statutory language alone does not provide a clear answer, and indications of congressional intent expressed in well-established methods, viewed in light of the purpose of the continuing resolution, will tip the balance.

In one case, for example, a continuing resolution provided a lump-sum appropriation for the National Oceanic and Atmospheric Administration's research and facilities account, and provided further for the transfer of \$1.8 million from the Fisheries Loan Fund. The **first** continuing resolution for 1987 included the transfer provision and was signed into law on October 1, 1986. The Fisheries **Loan** Fund was scheduled to expire at "the close of September 30, 1986." Under a strictly technical reading, the \$1.8 million ceased to be available once the clock struck midnight on September 30. However, the Comptroller General found the transfer provision effective, noting that a contrary result would "frustrate the obvious intent of Congress." **B-227658**, August 7, 1987.

While many of the continuing resolution provisions to be discussed will appear highly technical (because they are highly technical), there is an essential logic to them, evolved over many years, which is more readily seen from the perspective not of a **specific** case or problem, but of the overall goals and objectives of continuing resolutions and their relationship **to** the rest of the budget and appropriations process.

2. Use of Appropriation Warrants

Funds, including funds appropriated under a continuing resolution, are drawn from the Treasury by means of an appropriation **warrant** (TFS Form 6200).⁵ A warrant is the official document issued **pursuant** to law by the Secretary of the Treasury that establishes the amount of money authorized to be withdrawn from the **Treasury**.⁶ Under 31 U.S.C. § 3323(a), warrants authorized by law are to be signed by the **Secretary** of the Treasury and countersigned by the Comptroller General.

⁵Treasury Financial Manual, Vol. I, § 2-2040.

⁶Terms Used in the Federal Budget Process, *supra* note 1, at 81.

Requirements relating to Treasury **warrants** maybe waived. Section **115(a)** of the Budget and Accounting Procedures Act of 1950, 31 U.S.C. § **3326(a)**, states:

“(a) When the Secretary of the Treasury and the Comptroller General decide that, with **sufficient** safeguards, existing procedures maybe changed to simplify, improve, and economize the control and accounting of **public** money, they may prescribe joint regulations for waiving any part of the requirements in effect on September 12, 1950, **that—**

“(1) **warrants** be issued and countersigned for the receipt, retention, and disbursement of public money and trust **funds**”

Under the authority of this section, the Secretary of the Treasury and the Comptroller General have issued several joint **regulations**.⁷

In the specific context of appropriation warrants, the joint regulations have been used to phase out the countersignature requirement. First, Department of the Treasury-General Accounting **Office** Joint Regulation No. 5 (October 18, 1974) waived the requirement for all appropriations except continuing resolutions. Next, Treasury-GAO Joint Regulation No. 6 (October 1, 1983) further **simplified** the process by requiring issuance of a **warrant** and countersignature under a continuing resolution only once, for the total amount appropriated, unless a subsequent resolution changed the annual amount. Finally, Treasury-GAO Joint Regulation No. 7, effective January 1, 1991, eliminated the countersignature requirement completely.

⁷Treasury-GAO Joint Regulations are included as an appendix to Title 7 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies. Because of **their nature**, they are not published in the Federal Register. Some of the earlier ones, but not those noted in the text, were published in the annual “Comp. Gen.” volumes. Title 7 of the Policy and Procedures Manual is the **only** GAO reference in which the regulations **and** amendments can be found together in a single location.

B. Rate for Operations

1. Current Rate

The current rate, as that term is used in continuing resolutions, is equivalent to the total amount of money which was available for obligation for an activity during the fiscal year immediately prior to the one for which the continuing resolution is enacted.

The term ‘current rate’ is used in continuing resolutions to indicate the level of spending which Congress desires for a program. For example, a resolution may appropriate sufficient funds to enable a program to operate at a rate for operations “not in excess of the current rate,” or at a rate “not in excess of the lower of the current rate” or the rate provided in a certain bill. It is possible to read the term “current rate” as referring to either the amount of money available for the program in the preceding year, or an amount of money **sufficient** to enable continuation of the program at the **level** of the preceding year. The two can be very different.

As a general proposition, GAO regards the term “current rate” as referring to a sum of money rather than a program **level**. E.g., 58 **Comp. Gen.** 530,533 (1979); **B-194362**, May 1, 1979. Thus, when a continuing resolution appropriates in terms of the current rate, the amount of money available under the resolution will be limited by that rate, even though an increase in the minimum wage may force a reduction in the number of people participating in an employment program (**B-194063**, May 4, 1979), or an increase in the mandatory **level** of assistance will reduce the number of meals provided under a meals for the elderly program (**B-194362**, May 1, 1979).

The term “current rate” refers to the rate of operations carried on within the appropriation for the prior **fiscal** year. **B-152554**, December 6, 1963. The current rate is equivalent to the total appropriation, or the total funds which were available for obligation, for an activity during the previous fiscal year. Edwards v. Bowen, 785 **F.2d** 1440 (9th Cir. 1986); 64 **Comp. Gen.** 21 (1984); 58 **Comp. Gen.** 530,533 (1979); **B-194063**, May 4, 1979; **B-194362**, May 1, 1979; **B-164031(1)**, December 13, 1972. Funds **administratively** transferred from the account during the fiscal year, under authority contained in substantive legislation, should not be deducted in determining the current rate. **B-197881**, April 8, 1980; **B-152554**, November 4, 1974.

It follows that funds transferred into the account during the fiscal year pursuant to statutory authority should be excluded. **B-197881**, April 8, 1980.

In those instances in which the program in question has been funded by one-year appropriations in prior years, the current rate is equal to the total funds appropriated for the program for the previous **fiscal** year. **E.g.**, 64 **Comp. Gen.** 21,22 (1984); 58 **Comp. Gen.** 530 (1979); **B-194362**, May 1, 1979. In those instances in which the program has been funded by multiple-year or no-year appropriations in prior years, the current rate is equal to the total funds appropriated for the previous fiscal year plus the total of unobligated budget authority carried over into that year from prior years. 58 **Comp. Gen.** 530 (1979); **B-152554**, October 9, 1970.

One apparent deviation from this calculation of current rate occurred in 58 **Comp. Gen.** 530 (1979), a case involving the now obsolete **CETA** (Comprehensive Employment and Training Act) program. In that decision, the Comptroller General, in calculating the current rate under the 1979 continuing resolution, included funds appropriated in a 1977 appropriation act and obligated during 1977. **Ordinarily, only** funds appropriated by the fiscal year 1978 appropriation act, and carryover funds unobligated at the beginning of fiscal year 1979, would have been included in the current rate. However, in this instance the funds appropriated in 1977 were included because it was clear from the legislative history of the appropriation act that Congress intended these funds to be an advance of appropriations for fiscal year 1978. Accordingly, Congress did not appropriate funds for this activity in the fiscal year 1978 appropriation act. Thus, in order to ascertain the actual amount available for the activity for fiscal year 1978, it was necessary to include the advance funding provided by the 1977 appropriation act. The rationale used in this decision would apply only when it is clear that Congress was providing advance funding for the reference fiscal year in an earlier year's appropriation act.

Where funding for the preceding fiscal year covered only a part of that year, it maybe appropriate to "annualize" the previous year's appropriation in order to determine the current rate. This was the result in 61 **Comp. Gen.** 473 (1982), in which then 1981 appropriation for a particular program had been contained in a supplemental appropriation act and was intended to cover only the

last quarter of the fiscal year. The current rate for purposes of the **FY** 1982 continuing resolution was four times the **FY** 1981 figure.

There are exceptions to the rule that “current rate” means a sum of money rather than a program level. For example, GAO construed the **FY** 1980 continuing resolution as appropriating sufficient funds to support an increased number of Indochinese refugees in view of explicit statements by both the Appropriations and the Budget Committees that the resolution was intended to fund the higher program level. **B-197636**, February 25, 1980. Also, the legislative history of the **FY** 1981 continuing resolution (Pub. L. No. 96-369, 94 Stat. 1351) indicated that in some instances “current rate” must be interpreted so as to avoid reducing existing program levels.

It is always preferable for the exception to be specified in the resolution itself. Starting with the first continuing resolution for fiscal year 1983 (Pub. L. No. 97-276, 96 Stat. 1186 (1982)), Congress began appropriating for the continuation of certain programs “at a rate to maintain current operating levels.” GAO has construed this language as meaning sufficient funds to maintain the program in question at the same operating level as at the end of the immediately preceding **fiscal year**. **B-209876**, April 14, 1983; **B-200923**, November 16, 1982 (non-decision letter) (incorporating some **discussion** of legislative history).

2. Rate Not Exceeding Current Rate

When a resolution appropriates funds to continue an activity at a rate for operations “not in excess of the current rate,” the amount of funds appropriated by the resolution is equal to the current rate less any unobligated balance carried over into the present year.

As discussed in the preceding section, the current rate is equivalent to the total amount of funds that was available for obligation for a project or activity in the preceding fiscal year. When the continuing resolution appropriates funds to continue an activity at a rate for operations “not in excess of the current rate,” it is the intent of Congress that the activity have available for obligation in the present fiscal year no more funds **than** it had available for obligation in the preceding fiscal year. Therefore, if there is a balance of unobligated funds which can be carried over into the present **fiscal** year, this balance must be deducted from the current rate in determining the amount of funds appropriated by the continuing resolution. If this

were not done, the program would be funded at a higher level in the present year than it was in the preceding year, which is not permitted by the language of the resolution. E.g., 58 **Comp. Gen.** 530,535 (1979).

For example, suppose the continuing resolution for **fiscal** year 1992 appropriates **sufficient** funds to continue an activity at a rate not exceeding the current rate. The current rate, or the **total** amount which was available for obligation in **fiscal** year 1991, is \$1,000,000. Of this amount, \$100,000 remains unobligated at the end of **1991**, and is available for obligation in 1992. If the activity is to operate at a rate not to exceed the current rate, \$1,000,000, then the resolution can appropriate **no** more than the difference between the current rate and the carryover from 1991 to 1992, or \$900,000. If the resolution were interpreted as appropriating the full current rate, then a total of \$1,100,000 would be available for **fiscal** year 1992, and the **activity** would be able to operate at a rate in excess of the current rate, a result prohibited by the language of the resolution.

An unobligated balance which does not carryover into **the** present **fiscal** year (the more common situation) does not have to be deducted. **B-152554**, November 4, 1974.

A commonly encountered form of continuing resolution formula appropriation is an amount not in excess of the current rate or the rate provided in some reference item, whichever is lower. The reference item may be an **unenacted** bill, a conference report, the President's budget estimate, etc. When the current rate produces the lower figure-the situation encountered in 58 **Comp. Gen.** 530—the above rule applies and an unobligated carryover balance must be deducted to determine the amount appropriated by the continuing resolution. However, when the current rate is not the lower of the two referenced items, the rule does not necessarily apply.

To illustrate, a continuing resolution appropriated funds for the **Office** of Refugee Resettlement at a rate for operations not in excess of the lower of the current rate or the rate authorized by a bill as passed by the House of Representatives. The rate under the House-passed bill was \$50 million. The current rate was \$77.5 million, of which \$39 million remained unobligated at the end of the preceding **fiscal** year and was authorized to be carried over into the current **fiscal** year. If the continuing resolution had simply specified a rate not in excess of

the current rate, or if the rate in the House-passed bill had been greater than the current rate, it would have been necessary to deduct - the \$39 million carryover balance from the \$77.5 million current rate to determine the maximum funding level for the current year. Here, however, the rate in the House-passed bill was the lower of the two.

Reasoning that the “current rate” already includes an unobligated carryover balance, if any, whereas the rate in the House-passed bill did not **include** a prior year’s balance, and supported by the legislative history of the continuing resolution, the Comptroller General concluded that the amount available for the current year was the amount appropriated by the resolution, \$50 million, plus the unobligated carryover balance of \$39 million, for a total of \$89 million. 64 **Comp. Gen.** 649 (1985). The decision distinguished 58 **Comp. Gen.** 530, stating that “the rule with respect to deduction of unobligated balances in 58 **Comp. Gen.** 530 is not applicable where the lower of two referenced rates is not the current rate.” *Id.* at 652–53. The case went to court, and the Ninth Circuit Court of Appeals reached the same result. **Edwards v. Bowen**, 785 F.2d 1440 (9th Cir. 1986).

In sum, if a continuing resolution appropriates the lower of the current rate or the rate in some reference item, you compare the two numbers to determine which is lower before taking any unobligated carryover balance into account. If the current rate is lower, you then deduct the carryover balance to determine the funding level under the continuing resolution. If the rate in the reference item is **lower**, the funding level is the reference rate plus the carryover balance unless it is clear that this is not what was intended.

3. Spending Pattern Under Continuing Resolution

a. Pattern of Obligations

An agency may determine the pattern of its obligations under a continuing resolution so long as it operates under a plan which will keep it within the rate for operations limit set by the resolution. If an agency usually obligates most of its annual budget in the first month or **first** quarter of the **fiscal** year, it may continue that pattern under the resolution. If **an** agency usually obligates funds uniformly over the entire year, it will be limited to that pattern under the resolution,

unless it presents convincing reasons why **its** pattern must be changed in the current **fiscal** year.

Continuing resolutions are often enacted to cover a limited period of time, such as a month or a calendar quarter. The time limit stated in the resolution is the **maximum** period of time during which funds appropriated by the resolution are available for obligation.

However, this limited period of availability does not affect the amount of money appropriated by the resolution. The rate for operations specified in the resolution, whether in terms of an appropriation act which has not yet become law, a budget estimate, or the current rate, is an annual amount. The continuing resolution, in general, regardless of its period of duration, appropriates this **full** annual amount. See **B-152554**, November 4, 1974.

Because the appropriation under **a** continuing resolution is the **full** annual amount, an agency may generally follow any pattern of obligating funds, so long as it is operating under a plan which will enable continuation of activities throughout the **fiscal** year within the limits of the annual amount appropriated. Thus, under a resolution with a duration of one month, and which appropriates funds at a rate for operations not in excess of the current rate, the agency is not necessarily limited to incurring obligations at the same rate it incurred them in the corresponding month of the preceding year. **B-152554**, December 6, 1963. The same principle applies when the resolution appropriates funds at a rate to maintain current operating levels. **B-209676**, April 14, 1983.

However, the pattern of obligations in prior years does provide a framework for determining the proper pattern of obligations under the continuing resolution. For example, if the activity is a formula grant program in which nearly all appropriated funds are normally obligated at the beginning of the **fiscal** year, then the full annual amount should be made available to the agency under the resolution, even though the resolution may be in effect for only one month. However, if the activity is salaries and expenses, in which funds are normally obligated uniformly throughout the year, then the amount made available to the agency should be only one-twelfth of the annual amount under a one-month resolution or one-fourth of the annual amount under a calendar quarter resolution. **B-152554**, February 17, 1972.

Congress can, of course, alter the pattern of obligations by the language of the resolution. For example, if the resolution **limits** obligations in any calendar quarter to one-fourth of the annual rate, the agency is limited to that one-fourth rate regardless of its normal pattern of obligations, **B-152554**, October 16, 1973. Further, even if the resolution **itself** does not have such limitations, but the legislative history clearly shows the intent of Congress that only one-fourth of the annual rate be obligated each calendar quarter, only this amount should be made available unless the agency **can** demonstrate a real need to exceed that rate. **B-152554**, November 4, 1974.

b. Apportionment

The requirement that appropriations be apportioned by the **Office** of Management and Budget, imposed by the **Antideficiency** Act, applies to funds appropriated by continuing resolution as well as regular appropriations. See generally **OMB** Circular No. **A-34**, Part **IV** (1985).

Typically, **OMB** has permitted some continuing resolution funds to be apportioned automatically. For example, if a given continuing resolution covers 10 percent of a **fiscal** year, **OMB** may permit 10 percent of the appropriation to be apportioned automatically, meaning that the agency can obligate this amount without seeking a specific apportionment. Under such an arrangement, if program requirements produced a need for additional funds, the agency would have to seek an apportionment from **OMB** for the larger amount.

Apportionment requirements may vary from year to year because of differences in duration and other aspects of applicable continuing resolutions. A device **OMB** has commonly used to announce its apportionment requirements for a given fiscal year is an **OMB** Bulletin reflecting the particular continuing resolution for that year.

With the change in warrant procedures brought about by the Treasury-GAO Joint Regulations discussed earlier, the apportionment **process** plays an even more vital role in controlling an agency's pattern of obligations under a continuing resolution.

4. Liquidation of Contract Authority

When in the preceding **fiscal** year Congress has provided an agency with contract authority, the continuing resolution must be interpreted as appropriating **sufficient** funds to liquidate that authority to the extent it becomes due during the period covered by the continuing resolution.

When an activity operates on the basis that in one year Congress provides contract authority to the agency and in the next year appropriates funds to liquidate that authority, then a continuing resolution in the second year must be interpreted as appropriating **sufficient** funds to liquidate the outstanding contract authority. The term “contract authority” means express statutory authority to incur contractual obligations in advance of appropriations. Thus, there is no “rate for operations” limitation in connection with the liquidation of due debts based on **validly** executed contracts entered into under statutory contract authority. In this context, rate for operations limitations apply only to new contract authority for the current **fiscal** year. **B-114833**, November 12, 1974.

5. Rate for Operations Exceeds Final Appropriation

If an agency operating under a continuing resolution incurs obligations within the rate for operations limit, but Congress subsequently appropriates a total annual amount **less** than the amount of these obligations, the obligations remain valid, **B-152554**, February 17, 1972.

For example, a continuing resolution for a period of one month may have a rate for operations limitation of the current rate. The activity being funded is a grant program and the agency obligates the full annual amount during the period of the resolution. Congress then enacts a regular appropriation act which appropriates for the activity an amount less than the obligations already incurred by the agency. Under these circumstances, the obligations incurred by the agency remain valid obligations of the United States.

Having established that the “excess” obligations remain valid, the next question is how they are to be paid. At one time, GAO took the position that an agency finding **itself** in this situation must not incur any further obligations and must attempt to negotiate its obligations downward to come within the amount of the final appropriation. **B-152554**, February 17, 1972. **If** this is not possible, the agency would have to seek a supplemental or deficiency appropriation. This

position was based **on** a provision commonly appearing in continuing resolutions along the following lines:

“Expenditures made pursuant to this joint resolution **shall** be charged to the applicable appropriation, fund, or authorization whenever a **bill** in which such applicable appropriation, fund, or authorization is contained is enacted into **law**.”⁸

However, the 1972 opinion failed to take into consideration another provision commonly included in continuing resolutions:

“Appropriations made and authority granted pursuant to this joint resolution **shall** cover **all** obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this joint resolution.”⁹

When these two provisions are considered together, it becomes apparent that the purpose of the first provision is merely to emphasize that the funds appropriated by the continuing resolution are not in addition to the funds later provided when the applicable regular appropriation act is enacted. Accordingly, GAO modified the 1972 opinion and held that funds made available by a continuing resolution remain available to pay validly incurred obligations which exceed the amount of the final appropriation. 62 **Comp. Gen.** 9 (1982). See also 67 **Comp. Gen.** 474 (1988); **B-207281**, October 19, 1982.

Thus, obligations under a continuing resolution are treated as follows:

“When an annual appropriation act provides sufficient funding for an appropriation account to cover obligations previously incurred under the authority of a continuing resolution, any unpaid obligations are to be charged to and paid from the applicable account established under the annual appropriation act. Similarly, to the extent the annual act provides sufficient funding, those obligations which were incurred and paid during the period of the continuing resolution must be charged to the account created by the annual appropriation act. On the other hand, to the extent the **annual** appropriation act does not provide sufficient funding for the appropriation account to cover obligations validly incurred under a continuing resolution, the obligations in excess of the amount provided by the annual act should be charged to and paid from the appropriation account established under authority of the continuing resolution.

⁸**E.g.**, Pub. L. No. 101-100, § 104, 103 Stat. 638,640 (1989) (1990 continuing resolution). Comparable provisions have been included in continuing resolutions for over a century. See, for example, the FY 1883 **continuing** resolution (22 Stat. 384) discussed in 3 Lawrence, **First Comp. Dec.** 213 (1882).

⁹**E.g.**, Pub. L. No. 101-100, **supra** note 8, 5103.

[Footnote omitted.] Thus the funds made available by the resolution **must** remain available to pay these obligation.”

62 **Comp. Gen.** 9, 11–12 (1982). However, to comply with the intent of the lower appropriation, **OMB** requires that agencies “reduce obligations in the most cost-effective way and to the maximum extent possible.” **OMB** Circular No. **A-34**, §22.1. Thus, as **GAO** had advised in 1972, agencies are still required **to** make their best efforts to remain within the amount of the final appropriation. The change recognized in 62 **Comp. Gen.** 9 is that, to the extent an agency is unable to do so, the appropriation made by the continuing resolution remains available **to** liquidate the “excess” obligations.

C. Projects or Activities

“Projects or activities” **as** used in continuing resolutions may have two meanings. When **determining** which government programs are covered by the resolution, and the rate for operations limit, the term “project or activity” refers to the total appropriation rather than to **specific** activities. When determining whether an activity was authorized or carried out in the preceding year, the term “project or activity” may refer to the **specific** activity. The following paragraphs will elaborate.

The term “projects or activities” is used in two contexts in continuing resolutions. First, it is used in the appropriating language to indicate which government programs are to be **funded** and at what rate. Thus a resolution might appropriate sufficient funds to continue “projects or activities provided for” in a certain appropriation bill “to the extent and in the manner” provided in the bill. Occasionally Congress will use only the term “activities” by appropriating sufficient funds “for continuing the following activities, but at a rate for operations not in excess of the current rate.”

When used in this context, “projects or activities” or simply “activities” does not refer to specific items contained as activities in the **administration’s** budget submission or in a committee report.

Rather, the term refers to the appropriation for the preceding fiscal year. **B-204449**, November 18, 1981.¹⁰ Thus, **if a** resolution appropriates funds to continue “projects or activities” under a certain authorizing act at a rate for operations not exceeding the current rate, the agency is operating within the **limits** of the resolution so long as the total of obligations under the appropriation does not exceed the current rate. **Within** the appropriation, an agency may fund a particular activity at a higher rate than that activity was funded in the previous year and still not violate the current rate limitation, assuming of course that the resolution itself does not provide to the contrary.

An exception to the interpretation that “projects or activities” refers to the appropriation **in** existence in the preceding **fiscal** year occurred in 58 **Comp. Gen.** 530 (1979). In prior years, Comprehensive Employment and Training Act programs had been funded in two separate appropriations, Employment and Training Assistance and **Temporary** Employment Assistance. The individual programs under the two appropriations differed only in that the number of jobs provided under Temporary Employment Assistance depended on the condition of the national economy.

Concurrently with the enactment of the 1979 continuing resolution, Congress amended the **CETA** authorizing legislation so that certain programs previously operating under the Temporary Employment Assistance appropriation were to operate in **fiscal** year 1980 under the Employment and Training **Assistance** appropriation. Under these circumstances, if the phrase “activities under the Comprehensive Employment and Training Act” in the continuing resolution had been interpreted as referring to the two separate appropriations made in the preceding year, and the current rates calculated accordingly, there would have been **insufficient** funds available for the now increased programs under the Employment and Training Assistance appropriation, and a surplus of funds available for the decreased programs under the **Temporary** Employment Assistance appropriation. To avoid this result, the Comptroller General

¹⁰This position also follows from decisions such as **B-162447**, March 8, 1971, read in conjunction with decisions on the availability of **lump-sum** appropriations. Of **course**, if the appropriation for the preceding **fiscal** year was a line-item appropriation, then the scope of “project **or** activity” will be limited accordingly. See 66 **Comp. Gen.** 484 (1987) (**Special** Defense Acquisition Fund, a revolving fund made **available** by annual “limitation on obligations” provisions, held a “projector activity” for purposes of appropriating language in a **continuing** resolution).

interpreted the 1979 continuing resolution as appropriating a single lump-sum amount for all **CETA** programs, based on the combined current rates of the two appropriation accounts for the previous year. See 58 **Comp. Gen.** at 535–36.

The term “projects or activities” has also been used in continuing resolutions to prohibit the use of funds to start new programs. Thus, many resolutions have contained a section stating that no funds made available under the resolution shall be available **to** initiate or resume any project or activity which was not conducted during the preceding **fiscal** year. When used in this context, the term “projects or activities” refers to the individual program rather than the total appropriation. See 52 **Comp. Gen.** 270 (1972); 35 **Comp. Gen.** 156 (1955).

One exception to this interpretation occurred in **B-1** 78131, March 8, 1973. In that instance, in the previous **fiscal** year funds were available generally for construction of buildings, including plans and **specifications**. However, a **specific** construction project was not actually under way during the previous year. Nonetheless it was decided that, because funds were available generally for construction in the previous year, this specific project was not a new project or activity and thus could be funded under the continuing resolution.¹¹

In more recent years, Congress has resolved the differing interpretations of “project or activity” by altering the language of the new program limitation. Rather than limiting funds to programs which were actually conducted in the preceding year, the more recent resolutions prohibit use of funds appropriated by the resolution for “any project or activity for which appropriations, funds, or other authority were not available” **during the preceding fiscal year**.¹² Thus, if an agency had **authority** and sufficient funds to carry out a particular program in the preceding year, that program is not a new project or activity regardless of whether it was actually operating in the preceding year.

A variation occurred in 60 **Comp. Gen.** 263 (1981). A provision of the Higher Education Act authorized loans to institutions of higher

¹¹**Cf.** 4 **Lawrence**, **First Comp.** Dec. 116 (1883), which concluded that **obligations made** under a **continuing** resolution for certain building **repairs** not then authorized violated the **Antideficiency** Act.

¹²See, for example, Pub. L. No. 101-100, § 101(c), 103 Stat. 638 (1989) (1990 continuing resolution).

education from a revolving fund, not to exceed limitations **specified** in appropriation acts. Congress had not released money from the loan fund since 1978. The **FY 1981** continuing resolution provided funds to the Department of Education based on its regular **FY 1981** appropriation bill as passed by the House of Representatives. The House-passed version included \$25 million for the higher education loans. Since the continuing resolution did not include a general prohibition against using funds for projects not funded during the preceding fiscal year, the \$25 million from the loan fund was available under the continuing resolution, notwithstanding that the program had not been funded in the preceding year.

D. Relationship to Other Legislation

1. Not Otherwise Provided For Continuing resolutions often appropriate funds to continue **projects** “not otherwise provided for.” This language limits funding to those programs which are not funded by any other appropriation act. Programs which received funds under another appropriation act are not covered by the resolution even though the authorizing legislation which created the program is mentioned **specifically** in the continuing resolution. See **B-183433**, March 28, 1979. For example, if a resolution appropriates funds to continue activities under the Social Security Act, and a specific program under the Social Security Act has already been funded in a regular appropriation act, the resolution does not appropriate any additional funds for that program.

2. Status of Bill or Budget Estimate Used as Reference

When a continuing resolution appropriates funds at a rate for operations specified in a certain bill or in the administration’s budget estimate, the status of the bill or estimate on the date the resolution **passes** is controlling, unless the resolution **specifies** some other reference date.

A continuing resolution will often provide funds to continue activities at a rate provided in a certain bill that has passed one or both Houses of Congress, or at the rate provided in the administration’s budget estimate. **In** such instances, the resolution is referring to the status of

the bill or budget estimate on the date the resolution became law. **B-164031(2).17**, December 5, 1975; **B-152098**, January 30, 1970.

For example, the resolution may provide that activities are to be continued at the current rate or at the rate provided in the budget estimate, whichever is lower. The budget estimate referred to is the one in existence at the time the resolution is enacted, and the rate for operations cannot be increased by a subsequent upward revision of the budget estimate. **B-164031(2).17**, December 5, 1975.

Similarly, **if a** resolution provides that activities are **to** continue at the rate provided in a certain appropriation bill, the resolution is referring **to** the status of the bill on the date the resolution is enacted. A later veto of the bill by the President would not affect the continuation of programs under the resolution. **B-152098**, January 15, 1973.

Where a continuing resolution provides funds based on a reference bill, this includes restrictions or limitations contained in the reference bill, as well as the amounts appropriated, unless the continuing resolution provides otherwise. 33 **Comp. Gen.** 20 (**B-116069**, July 10, 1953);¹³ **B-199966**, September 10, 1980. In National Treasury Employees Union v. Devine, 733 **F.2d** 114 (D.C. Cir. 1984), the court construed a provision in a reference bill prohibiting the implementation of certain regulations, accepting without question the restriction as having been “enacted into law” by a continuing resolution which provided funds “to the extent and in the manner provided for” in the reference bill. See also Connecticut v. Schweiker, 684 **F.2d** 979 (D.C. Cir. 1982), cert. denied, 459 U.S. 1207. Obviously, the same result applies under a “full text” continuing resolution. **B-221694**, April 8, 1986.

A provision in a continuing resolution using a reference bill may incorporate legislative history, in which event the specified item of legislative history will determine the controlling version of the reference bill. For example, an issue in American Federation of Government Employees v. Devine, 525 **F. Supp.** 250 (D.D.C. 1981), was whether the 1982 continuing resolution prohibited the Office of Personnel Management from funding coverage of therapeutic abortions in government health plans. The resolution funded employee health benefits “under the authority and conditions set forth

¹³Two decisions begin on the same page, hence the variation incitation format.

in **H.R. 4121** as reported to the Senate on September 22, 1981.” An earlier version of **H.R. 4121** had included a provision **barring** the funding of therapeutic abortions. However, the bill as reported to the full Senate by the Appropriations Committee on September 22, 1981, dropped the provision. Accordingly, the continuing resolution could not form the basis for refusing to fund therapeutic abortions in the plaintiff’s 1982 health plan.

It is **also** not uncommon for a continuing resolution to appropriate funds as provided in a particular reference **bill** at a rate for operations provided for in the conference report on the reference bill. At a minimum, this will include items on which the House and Senate conferees agreed, **as** reflected in the conference report. If the resolution also incorporates the “joint explanatory statement” portion of the conference report, then it will enact those amendments reported in “technical disagreement” as well. See **B-221694**, April 8, 1986; **B-205523**, November 18, 1981; **B-204449**, November 18, 1981.

3. More Restrictive Authority

The “more restrictive authority,” as that term is used in continuing resolutions, is the version of a bill which gives an agency less discretion in obligating and disbursing funds under a certain program.

Continuing resolutions will often appropriate funds to continue projects or activities at the rate provided in either the version of an appropriation act that has passed the House or the version that has passed the Senate, whichever is lower “or under the more restrictive authority.” Under this **language**, the version of the bill which appropriates the lesser amount of money for an activity will be controlling. If both versions of the bill appropriate the same amount, the version which gives the agency less discretion in obligating and disbursing funds under a program is the “more restrictive authority” and will be the reference for continuing the program under the resolution. **B-210922**, March 30, 1984; **B-152098**, March 26, 1973; **B-152554**, December 15, 1970.

However, this provision may not be used to amend or nullify a mandatory provision of prior permanent law. To illustrate, the Federal Housing Administration was required by a provision of permanent law to appoint an Assistant Commissioner to perform certain functions. The position subsequently became controversial. For the first month

of **fiscal** year 1954, the agency operated under a continuing resolution which included the “more restrictive authority” provision. Language abolishing the position had been contained in one version of the reference bill, but not both. The bill, when subsequently enacted, abolished the position.

Under a strict application of the “more restrictive authority” provision, it could be argued that there was no authority **to** continue the employment of the Assistant **Commissioner** during the month covered by the continuing resolution. Noting that “laws are to be given a sensible construction where a literal application thereof would lead to **unjust** or absurd consequences, which should be avoided if a reasonable application is consistent with the legislative purpose,” the Comptroller General held that the Assistant Commissioner could be paid his **salary** for the month in question. **B-116566**, September 14, 1953. The decision concluded:

“[Manifestly the [more restrictive authority] language. . . was not designed to amend or nullify prior permanent **law** which theretofore required, or might thereafter require, the continuance of a **specific** project or activity during July 1953. . . .

....

“... Accordingly, it is concluded that the words ‘the lesser amount or the more restrictive authority’ as used in [the continuing resolution] had reference to such funds and authority as theretofore were provided in appropriations for [the preceding **fiscal** year], **and** which might be changed, enlarged or restricted from year to year.”

In addition, continuing resolutions frequently provide that a provision “which by its terms is applicable to more than one appropriation” and which was not included in the applicable appropriation act for the preceding fiscal year, will not be applicable to funds or authority under the resolution unless it was included in identical form in the relevant appropriation bill as passed by both the House and the Senate. Thus, in 52 **Comp. Gen.** 71 (1972), a provision in the House version of the 1973 Labor Department appropriation act prohibited the use of “funds appropriated by this Act” for Occupational **Safety** and Health Act inspections of firms employing 25 persons or less. The Senate version contained the identical version except **that** “15” was substituted for “25.” The continuing resolution for that year contained both the “more restrictive authority” and the “applicable to more than one appropriation” provisions. The Comptroller General concluded that, even though the House provision was more

restrictive, the **OSHA** provision did not apply to funds **under** the continuing resolution since it had not been contained in the 1972 appropriation act and by its terms it was applicable to more than one appropriation (i.e., it applied to the entire appropriation act). See also **B-142011**, August 6, 1969.

For purposes of the “applicable to more than one appropriation” provision, GAO has construed the “applicable appropriation act for the preceding **fiscal** year” as meaning the regular appropriation act for the preceding year and not a supplemental. **B-210922**, March 30, 1984. (The cited decision also illustrates some of the complexities encountered when the appropriation act for the preceding year was itself a continuing resolution.)

4. Lack of Authorizing Legislation

In order for a government agency to **carry** out a program, the program must first be authorized by law and then funded, usually by means of regular appropriations. This section deals with the relationship of continuing resolutions to programs whose authorization has expired or is about to expire. The common issue is the extent to which a continuing resolution provides **authority** to continue the program after expiration of the underlying authorization.

As the following discussion will reveal, there are no easy answers. The cases frequently involve a complex interrelationship of various legislative actions (or inactions), and are not susceptible **to** any meaningful formulation of simple rules. For the most part, the answer is primarily a question of intent, circumscribed of course by statutory language and aided by various rules of statutory construction.

We start with a fairly straightforward case. Toward the end of **FY** 1984, Congress was considering legislation (**S.2456**) to establish a commission to study the Ukrainian famine of 1932–33. The bill passed the Senate but was not enacted into law before the end of the **fiscal year**. The **FY** 1985 continuing resolution provided that “[t]here are hereby appropriated \$400,000 to carry out the provisions of **S.2456**, as passed by the Senate on September 21, 1984.”¹⁴ If this provision were not construed as authorizing the establishment and operation of the commission as well as the appropriation of funds, it would have been absolutely meaningless. Accordingly, GAO concluded

¹⁴Pub. L. No. **98-473**, **Stat. 1837**, 1973 (1984).

that the appropriation incorporated the substantive authority of **S.2456.B-219727**, July 30, 1985. The result was supported by clear and explicit legislative history.

In a 1975 case, GAO held that the **specific** inclusion of a program in a continuing resolution will provide both authorization and funding **to** continue the program despite the expiration of the appropriation authorization legislation. Thus, for example, if the continuing resolution specifically states that the School Breakfast Program is to be continued under the resolution, the program maybe continued although funding authorization legislation for the program expires prior to or during the period the resolution is in effect. 55 **Comp. Gen.** 289 (1975). The same result would follow if the intent to continue the program was made particularly clear in legislative history. 65 **Comp. Gen.** 318,320-21 (1986).

The result in 55 **Comp. Gen.** 289 flows from two concepts. First, the continuing resolution, as the later enactment, is the more recent expression of congressional intent. Second, if Congress can appropriate funds in excess of a specific ceiling in authorizing legislation, which it can, then it should be able to appropriate funds **to** continue a program whose funding authorization is about to expire, at least where the authorization of appropriations is not a legal prerequisite to the appropriation itself.

However, the “**rule**” of 55 **Comp. Gen.** 289 is not an absolute and the result in any given case will depend on several variables. Although not spelled out as such in any of the decisions, the variables may include: the degree of specificity in the continuing resolution; the apparent intent of Congress with respect to the expired program; whether what has expired is an authorization of appropriations or the underlying program authority itself; and the duration of the continuing resolution (short-term vs. full fiscal year).

In one case, for example, “**all** authority” under the Manpower Development and Training Act terminated on June 30, 1973. The program was not **specifically** provided for in the 1974 continuing resolution, and the authority in fact was not reestablished until enactment of the Comprehensive Employment and Training Act six months later. Under these circumstances, the Claims Court held that, in the absence of express language **in** the continuing resolution or elsewhere, contracts entered into during the gap between expiration

of the **MDTA** and enactment of **CETA** were without legal authority and did not bind the government. *Consortium Venture Corp. v. United States*, 5 Cl. Ct. 47 (1984), aff'd mem., 765 F.2d 163 (Fed. Cir. 1985).

In another case, recent Defense Department authorization acts, including the one for **FY 1985**, had authorized a test program involving payment of a price differential to “labor surplus area” contractors. The test program amounted to an exemption from **permanent** legislation prohibiting the payment of such differentials. **The 1985** provision expired, of course, at the end of **FY 1985**. The 1986 continuing resolution made no specific provision for the test program nor was there any evidence of congressional intent to continue the test program under the resolution. (This lack of intent was confirmed when the 1986 authorization act was subsequently enacted without the test program provision.) GAO found that the Defense Logistics Agency’s failure to apply the price differential in evaluating bids on a contract awarded under the continuing resolution (even though the differential had been included in the solicitation issued prior to the close of **FY 1985**) was not legally objectionable. 65 **Comp. Gen.** 318 (1986).

A more **difficult** case was presented in **B-207186**, February **10**, 1989. Congress enacted two pieces of legislation on December 22, 1987. One was a temporary extension of the **Solar Bank**, which had been scheduled to go out of existence on September 30, 1987. Congress had enacted several temporary extensions **while** it was considering reauthorization, the one in question extending the Bank’s life to March 15, 1988. The second piece of legislation was the final continuing resolution for **1988** which funded the government for the remainder of the fiscal year. The resolution included a specific appropriation of \$1.5 million for the Solar Bank, with a two-year period of availability.

If the concept of 55 **Comp. Gen.** 289 were applied, the result would have been that the specific appropriation in the continuing resolution, in effect, reauthorized the Solar Bank as well. However, the “later enactment of Congress” concept has little relevance when both laws are enacted on the same day. In addition, in contrast to 55 **Comp. Gen.** 289, there was no indication of congressional intent to continue

the Solar Bank beyond the March 1988 expiration **date**. Therefore, GAO distinguished prior **cases**,¹⁵ found that the **two** pieces of legislation could be reconciled, and concluded that the resolution merely appropriated funds for the Bank to use during the remainder of **its** existence.

Another case involving a sunset provision is 71 **Comp. Gen.** 378 (1992). The legislation establishing the United States Commission on Civil Rights provided for the **Commission** to terminate on September 30, 1991. During **fiscal** year 1991, Congress was working on the Commission's reauthorization and its regular **FY** 1992 appropriation. Although both bills passed both Houses of Congress, neither was enacted into law by September 30. The **first** continuing resolution for **FY** 1992, with a cutoff date of October 29, 1991, expressly provided funds for activities included in the Commission's **yet-unenacted** 1992 appropriations bill. It was clear from **all** of this that Congress intended the Commission to continue operating beyond September 30. Thus, the continuing resolution effectively suspended the sunset date and authorized the Commission to operate until October 28, 1991, when the regular 1992 appropriation act was enacted, at which time the regular appropriation provided similar authority until November 26, when the reauthorization was enacted.

Appropriation bills sometimes contain provisions making the availability of the appropriations contingent upon the enactment of additional authorizing legislation. If a continuing resolution used a bill with such a provision as a reference, **and** if the authorizing legislation was not enacted, the amount contained in the appropriation bill, and therefore the amount appropriated by the continuing resolution, would be zero. To avoid this possibility, a continuing resolution may contain a provision suspending the effectiveness of such "contingency" provisions for the life of the resolution. 'G Such a suspension provision will be applicable only until the referenced appropriation provision is enacted into law. 55 **Comp. Gen.** 289,294 (1975).

¹⁵GAO had also applied the concept of 55 **Comp. Gen.** 289 in 65 **Comp. Gen.** 524 (1986), holding that a **specific** provision in a regular appropriation act permitted the continuation of an activity whose organic authority had expired at the end of the preceding **fiscal** year. See also **B-164031(3)**, January 3, 1973.

¹⁶E.g., Pub. L. No. 102-109, §109, 105 Stat. 551,553 (1992 continuing resolution).

E. Duration

1. Duration of Continuing Resolution

Continuing resolutions generally provide that the budget authority provided for an activity by the resolution shall remain available until (a) enactment into law of a regular appropriation for the activity, (b) enactment of the applicable appropriation by both Houses of Congress without provision for the activity, or (c) a freed cutoff date, whichever occurs **first**.¹⁷ Once either of the **first** two conditions occurs, or the cutoff date passes, funds appropriated by the resolution are no longer available for obligation and new obligations may be incurred only if a regular appropriation is made or if the termination date of the resolution is extended.

The period of availability of funds under a continuing resolution can be extended by Congress by amending the **fixed** cutoff date stated in the resolution. **B-165731(1)**, November 10, 1971; **B-152098**, January 30, 1970. The extension may run beyond the session of Congress in which it is enacted. **B-152554**, December 15, 1970.

Thus, some fiscal years have seen a series of continuing resolutions, informally designated “**first**,” “**second**,” etc., up to “**final**.” This happens **as** Congress extends the freed cutoff date for short time periods until either all the regular appropriation acts are enacted or Congress determines that some or all of the remaining bills will not be enacted individually, in which event relevant portions of the resolution will continue in effect for the remainder of the fiscal year.

The second condition of the standard duration provision-enactment of the appropriation by both Houses without provision for the activity-will be considered to have occurred only when it is clear that Congress intended to terminate the activity. Thus, in **B-164031(1)**, March 14, 1974, although regular and supplemental appropriation acts had been enacted without provision for a program, the Comptroller General decided that funds for the program were still available under the continuing resolution. In this case, the legislative history indicated that in enacting the regular appropriation act, Congress was providing funding for only some of the programs normally funded by this act and was deferring consideration of other

¹⁷E.g., Pub. L. No. 102-109, §106, 105 Stat. at 553.

programs, including the one in question. Therefore, the second condition was not applicable. Moreover, because supplemental appropriations are intended to provide funding only for new or additional needs, omission of the program from the supplemental did not trigger the second cutoff provision.

As discussed previously, once the applicable appropriation is enacted into law, expenditures made under the continuing resolution are charged to that appropriation, except that **valid** obligations incurred under the continuing resolution in excess of the amount finally appropriated are charged to the account established under the continuing resolution.

2. Duration of Appropriations

For the most part, the duration (period of obligational availability) of an appropriation under a short-term continuing resolution does not present problems. If you have, say, only one month to incur obligations under a continuing resolution, it matters little that the corresponding appropriation in a regular appropriation act might be a multiple-year or no-year appropriation. Also, once the regular appropriation is enacted, it supersedes the continuing resolution and governs the period of availability. Questions may arise, however, under continuing resolutions whose duration is the balance of the **fiscal** year.

For example, the continuing resolution for fiscal year 1979 included the standard duration provision described above, with a cutoff date of September 30, 1979, the last day of the **fiscal** year. However, a provision in the Comprehensive Employment and Training Act stated that “notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection,” appropriations to carry out the **CETA** program shall remain available for two years. Applying the principle that a specific provision governs over a more general one, it was held that funds appropriated for **CETA** under the continuing resolution were available for obligation for two years in accordance with the **CETA** provision. **B-194063**, May 4, 1979; **B-1** 15398.33, March 20, 1979.

A few years earlier, the United States District Court for the District of Columbia had reached the same result in a case involving grants to states under the Elementary and Secondary Education Act. Pennsylvania. Weinberger, 367 F. Supp. 1378, 1384–85 (D.D.C.

1973). The court stated, “[i]t is a basic premise of statutory construction that in such **circumstances** the more specific measure . . . is to be held controlling over the general measure where inconsistencies arise in their application.” *Id.* at 1385.

Application of the same principle produced a similar result in **B-199966**, September 10, 1980. The 1980 continuing resolution appropriated funds for foreign economic assistance loans by referencing the regular 1980 appropriation bill which had passed the House but not the Senate. For that type of situation, the resolution provided for continuation of projects or activities “under the appropriation, fund, or authority granted by the one House [which had passed the bill].” The House-passed bill gave the economic assistance loan funds a two-year period of availability. The continuing resolution also included the standard duration provision with a cutoff date of September 30, 1980. Since the duration provision applied to the entire resolution whereas the provision applicable to the loan funds had a narrower scope, the latter provision was the more specific one and the loan funds were therefore held to be available for two years. See also 60 **Comp. Gen.** 263 (1981) for further discussion of similar continuing resolution language.

In some instances, an extended period of availability is produced by a specific exemption from the standard duration provision. For example, the 1983 continuing resolution provided foreign assistance funds “under the terms and conditions” set forth in the Foreign Assistance Appropriation Act of 1982, and further exempted that appropriation from the duration provision. Since under the 1982 act, appropriations for the African Development Fund were to remain available until expended, appropriations to the Fund under the continuing resolution were also no-year funds. **B-212876**, September 21, 1983. In view of the express exemption from the duration provision, there was no need to apply the “specific vs. general” rule because there was no conflict. See also **B-210922**, March 30, 1984.

3. Impoundment

The duration of a continuing resolution is relevant in determining the application of the Impoundment Control Act. Impoundment in the context of continuing resolutions was discussed in a letter to the Chairman of the House Budget Committee, **B-205053**, December 31, 1981. Generally, a withholding from obligation of funds provided

under a continuing resolution would constitute an impoundment. Where the continuing resolution runs for only part of the **fiscal** year, the withholding, even if proposed for the duration of the continuing resolution, should be **classified** as a deferral rather than a rescission. **Withholding** funds during a temporary continuing resolution is different from withholding them for the life of a regular annual appropriation in that, in the former situation, Congress is still deliberating over the regular funding levels. Also, deferred **funds** are not **permanently** lost when a continuing resolution expires if a subsequent funding measure is passed.

Under this interpretation, classification as a rescission would presumably still be appropriate where a regular appropriation is never passed, the agency is operating under continuing resolution authority for the entire **fiscal** year, and the timing of a withholding is such that **insufficient** opportunity would remain to utilize the **funds**. See **B-1** 15398, May 9, 1975.

The concepts in the two preceding paragraphs are reflected in **OMB Circular No. A-34, § 71.6** (1985).

Impoundment issues under continuing resolutions may arise in other contexts as well. See, **e.g.**, 64 **Comp. Gem** 649 (1985) (failure to make funds available based on good faith disagreement over treatment of carryover balances in calculating rate for operations held not to constitute an illegal rescission); **B-209676**, April 14, 1983 (no improper impoundment where funds were apportioned on basis of budget request although continuing resolution appropriated **funds** at rate to maintain program level, as long as apportionment was **sufficient** to maintain requisite program level).